



OOD  
PM 21-10

Effective: December 18, 2020

To: All of EOIR  
From: James R. McHenry III, Director  
Date: December 18, 2020

## FEES

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PURPOSE:	Memorialize and update Executive Office for Immigration Review policy regarding biennial fee reviews, fees, and fee waivers
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Operating Policies and Procedures Memorandum 06-01

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This Policy Memorandum (PM) supersedes and replaces Operating Policies and Procedures Memoranda (OPPM) 06-01, *Fee Waiver Form*.

### I. Background

EOIR is authorized by statute, Immigration and Nationality Act (INA) § 286(m), to charge fees for adjudication services “set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.” Further, “[s]uch fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.” *Id.*

Office of Management and Budget (OMB) Circular No. A-25 Revised<sup>1</sup> provides guidance to executive branch agencies regarding the scope and types of activities that may be covered by user fees and how to set such fees. Covering all Federal activities, including agency programs, that convey special benefits to recipients beyond those that the general public receives, it instructs agencies to review user charges for such activities biennially. *See* Circular No. A-25 Revised at sec. 8(e). A Federal statute also directs an “agency Chief Financial Officer” to “review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.” 31 U.S.C. § 902(a)(8).

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<sup>1</sup>Circular No. A-25 was published in 1959. Circular No. A-25 Revised rescinded and replaced Circular No. A-25 and its accompanying Transmittal Memoranda 1 and 2. *See* OMB Circular A-25, “User Charges,” 58 Fed. Reg. 38142, 38144 (July 15, 1993).

EOIR previously fell out of compliance with Circular No. A-25 Revised and 31 U.S.C. § 902(a)(8) regarding the review of its fees on a biennial basis and, until recently, had neither reviewed nor updated its fees in over 30 years.<sup>2</sup> To ensure adherence to the principles of OMB Circular No. A-25 Revised and 31 U.S.C. § 902(a)(8), it is now established EOIR policy to review its fees on a biennial basis. The Office of Policy, in coordination with the relevant components, will be responsible for coordinating these reviews and recommending any appropriate updates.

## II. Fees and Fee Waivers

EOIR fees are implemented through regulations. INA § 286(j); 8 C.F.R. § 1103.7. The amount of the relevant fee is established specifically by regulation. *See* 8 C.F.R. § 1103.7(b)(1) (fees for appeals to the Board of Immigration Appeals (Board)), (b)(2) (fees for motions to reopen and reconsider), (b)(4)(i) (fees for application forms published by EOIR), and (b)(4)(ii) (fees for application forms published by the Department of Homeland Security (DHS)).<sup>3</sup>

Fees for certain Board appeals and motions are payable online through the EOIR Payment Portal, <https://epay.eoir.justice.gov/index>. All other fees are payable to DHS. 8 C.F.R. § 1103.7(a)(3).

The availability of fee waivers is also established by regulation. 8 C.F.R. § 1103.7(c). No fee waiver may be granted with respect to the fee prescribed for a DHS form or action that is identified as non-waivable in DHS regulations. *Id.*

The fee waiver request form for the Board is EOIR Form 26A, <https://www.justice.gov/eoir/page/file/1237856/download>. There is no specific fee waiver request form for applications submitted at the immigration court level.

Although the regulations do not require a written ruling on a fee waiver request, the best practice, consistent with former OPPM 06-01, is for Immigration Judges (IJs) and Appellate Immigration Judges (AIJs) to commit such decisions to writing. IJs and AIJs are also encouraged to rule on fee waiver requests expeditiously to ensure there is no confusion by the parties regarding whether a submitted application has been accepted as filed.

Each fee waiver request is assessed on its own merits, and EOIR has no policy directing the automatic grant or denial of a fee waiver request. IJs and AIJs retain independent judgment and discretion in assessing fee waiver requests. 8 C.F.R. §§ 1003.1(d)(1)(ii), 1003.10(b).

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case.

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<sup>2</sup> On December 18, 2020, EOIR published a final rule altering its fees for the first time since 1986. *See Executive Office for Immigration Review; Fee Review*, 85 *Fed. Reg.* 82750 (Dec. 18, 2020).

<sup>3</sup> EOIR publishes application forms EOIR-40, EOIR-42A, and EOIR-42B, in addition to various appeal forms used by the Board, and it sets the fees for those forms by regulation. 8 C.F.R. § 1103.7(b)(1)-(4)(i). All other application forms adjudicated by EOIR—*e.g.* I-191, I-485, I-589, I-601, I-751, I-881—are published by DHS, and DHS sets the fees, if any, for those forms. 8 C.F.R. § 1103.7(b)(4)(ii).

Nothing in this PM limits an adjudicator's independent judgment and discretion in adjudicating cases or an adjudicator's authority under applicable law.

Please contact your supervisor if you have any questions.